

Army Regulation 25-58

Information Management

**Publication in
the Federal
Register of
Rules Affecting
the Public**

**Headquarters
Department of the Army
Washington, DC
15 September 2004**

UNCLASSIFIED

SUMMARY of CHANGE

AR 25-58

Publication in the Federal Register of Rules Affecting the Public

This new regulation, dated 15 September 2004--

- o Supersedes AR 310-4.
- o Transfers the proponency for the Army's Publications in the Federal Register of Rules Affecting the Public from The Adjutant General's Office to the Deputy Chief of Staff, G-1, U.S. Army Records Management and Declassification Agency throughout the regulation.
- o Replaces references to DAAG-AMS-P with RMDA throughout the regulation.
- o Implements rulemaking requirements of Executive Order 12866, Regulatory Planning and Review, September 30, 1993 throughout the regulation.
- o Implements rulemaking requirements of the Congressional Review Act (5 United States Code Chapter 8) throughout the regulation.
- o Provides policy guidance for the creation, submission, approval, and publication of rulemaking documents (app C).
- o Addresses changes to rulemaking and notice document formats required by the Office of the Federal Register (app E).
- o Adds Unified Agenda and Regulatory Plan Questionnaire (app F).

Information Management

Publication in the Federal Register of Rules Affecting the Public

By order of the Secretary of the Army:

PETER J. SCHOOMAKER
General, United States Army
Chief of Staff

Official:



JOEL B. HUDSON
Administrative Assistant to the
Secretary of the Army

History. This publication is a new Department of the Army regulation.

Summary. This regulation prescribes policies and assigns responsibilities for the submission of Department of the Army policies, practices, and procedures for publication in the Federal Register and the Code of Federal Regulations, as required by Title 44 of the United States Code, Chapter 15, and 5 United States Code Section 551 et seq. The regulation includes requirements implemented by DODD 5025.1 and various executive orders and acts that affect the publication of Army rules.

Applicability. This regulation applies to all Army personnel, including personnel

of the Army National Guard of the United States, the U.S. Army Reserve, and Department of the Army (DA) civilians who manage, prepare, and are responsible for publishing Army rules and notices. During full mobilization, requirements for this regulation are not exempt, except for those imposed by public law.

Proponent and exception authority.

The proponent of this regulation is the Deputy Chief of Staff, G-1. The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. The proponent may delegate this approval authority, in writing, to a division chief with the proponent agency or its direct reporting unit or field operating agency, in the grade of colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through their higher headquarters to the policy proponent. Refer to AR 25-30 for specific guidance.

Army management control process.

This regulation contains management control provisions in accordance with AR 11-

2, but it does not identify key management controls that must be evaluated.

Supplementation. Supplementation of this regulation and establishment of command or local forms are prohibited without prior approval from the Deputy Chief of Staff, G-1, ATTN: DAPE-ZXI-RM, 300 Army Pentagon, Washington, D.C. 20310-0300.

Suggested improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to U.S. Army Records Management and Declassification Agency, ATTN: AHRC-PDD-RP, 7701 Telegraph Road, Alexandria, VA 22315-3860.

Distribution. This publication is available in electronic media only and is intended for command levels A, B, C, D, and E for the Active Army, the Army National Guard of the United States, and the U.S. Army Reserve.

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Chapter 1

General

1-1. Purpose

This regulation prescribes procedures and responsibilities for publishing certain Department of the Army (DA) policies, practices, and procedures in the Federal Register (FR) as required by statute, and for inviting public comment thereon, as appropriate. This regulation implements portions of the Administrative Procedure Act (APA) (5 United States Code (USC) 551), Freedom of Information Act (FOIA) (5 USC 552(a)(1), as implemented by 32 CFR Part 336), Regulatory Flexibility Act (5 USC 601 et seq. as implemented by 1 CFR Chapter 1), Congressional Review Act (CRA) (5 USC 8), Executive Order (EO) 12866 of September 30, 1993, and DODD 5025.1.

1-2. References

Required and related publications and prescribed and referenced forms are listed in appendix A.

1-3. Explanation of terms

Abbreviations and special terms used in this regulation are explained in the glossary.

1-4. Responsibilities

a. The Administrative Assistant to the Secretary of the Army (AASA) acts as the regulatory officer and has oversight of the Army Federal Regulatory Program and Unified Agenda. The AASA will coordinate with the Assistant Secretary of the Army (Civil Works) (ASA(CW)) and the Deputy Chief of Staff, G-1 (DCS, G-1) to ensure the regulatory requirements and functions are properly executed.

b. The ASA(CW) will submit the annual Regulatory Plan and semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions to the AASA as required by EO 12866 and 5 USC 601, et seq.

c. The DCS, G-1 will develop policy and direction for the Rulemaking Program for the Department of the Army (DA).

d. The U.S. Army Records Management and Declassification Agency (RMDA) is responsible for policies concerning Department of the Army announcements and rules (proposed, interim, and final) published in the FR, and for ensuring Army compliance with this regulation. The RMDA will—

(1) Assist the officials listed in table 1-1 in the performance of their responsibilities.

(2) Represent the Army in submitting to the Office of the Federal Register (OFR) any matter published per this regulation.

(3) Submit the annual Regulatory Plan and semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions to the AASA as required by EO 12866 and 5 USC 601, et seq.

(4) Submit a copy of published final rules (and certain analyses related to the rule, as appropriate) to both Houses of Congress and to the Government Accountability Office (GAO), per the CRA.

e. The U.S. Army Corps of Engineers (USACE) will—

(1) Represent the Army in submitting to the OFR only those Civil Works Program rules (proposed, interim, and final) codified in Title 33, Navigation and Navigable Waters, and Title 36, Parks, Forests, and Public Property of the CFR, subject to the terms of this regulation.

(2) Submit a copy of published final rules (and certain analyses related to the rule, as appropriate) to both Houses of Congress and to the GAO, per the CRA.

(3) When submitting rules codified in Titles 33 and 36 of the CFR, USACE may coordinate directly with OFR (in lieu of RMDA) but must otherwise comply with the provisions of this regulation. In determining the applicability of this regulation to its rulemaking activities, Army Civil Works rulemaking proponents may replace "RMDA" with "USACE" wherever it appears in the text of this regulation.

f. The officials listed in table 1-1 (hereinafter referred to as proponents) are responsible—

(1) For ensuring maximum practicable participation of the public in the formulation of Army rules that affect the public by allowing public comments on any proposed rules. Where deemed appropriate by Army proponents, the public should participate in consensual mechanisms, such as negotiated rulemaking.

(2) For determining which matters within their areas of jurisdiction must be published in accordance with chapter 2 and for the submission of actions specified in chapter 3.

g. Legal officers and staff judge advocates supporting the proponents will provide legal advice and assistance in connection with proponent responsibilities contained herein.

**Table 1-1
Rulemaking Proponents**

Official	Area of Jurisdiction
Administrative Assistant to the Secretary of the Army	Immediate Office of the Secretary of the Army and the Office of the Administrative Assistant
Director of the Army Staff	Elements, Office of the Chief, U.S. Army
Head of each Army Staff Agency	Headquarters of the agency and its field operating and staff agencies (including the Installation Management Agency (IMA))
Commander, MACOM	Headquarters of MACOM and all subordinate activities and units
U.S. Army Records Management and Declassification Agency	All other elements not covered above

1-5. Designation of rulemaking coordinators

The officials listed in table 1-1 will designate rulemaking coordinators to perform the duties prescribed by chapter 3 of this regulation for their areas of functional responsibility. At the time of designation, RMDA (AHRC-PDD-RP) will be informed of the name and telephone number of the designated individual. The designee will—

- a. Ensure that all rules and notices to be published comply with the FR format.
- b. Transmit material to RMDA (AHRC-PDD-RP) and provide RMDA with the name, office symbol, and telephone number of the action officer for each rule or general notice for inclusion in the FR.
- c. Coordinate with publication control officers to ensure submission of statements of compliance required by paragraph 1-6.
- d. Notify RMDA (AHRC-PDD-RP), 7701 Telegraph Road, Alexandria, VA 22315-3860 when a regulation published in the FR becomes obsolete or is superseded by another regulation.

1-6. Statement of compliance

In order to ensure compliance with the regulation, no rule will be issued unless there is on file with RMDA (AHRC-PDD-RP) a statement to the effect that it has been evaluated under the provisions of this regulation. If the proponent determines that the provisions of this regulation are inapplicable, such determination will be explained in the accompanying statement.

1-7. Submission of publications for printing

When Army-wide publications or directives are transmitted to the Director, Army Publishing Directorate (APD) for publication, the DA Form 260 (Request for Publishing) or other transmittal paper will contain a statement that the regulation has been processed for publication in the FR or that it falls within the exempted category. APD will not publish any rule unless this statement is on DA Form 260. A copy of DA Form 260 may be submitted to RMDA (AHRC-PDD-RP) in lieu of the statement listed in paragraph 1-6.

1-8. Regulatory review

- a. Proponents of Army regulations will participate in the regulatory process and adhere to the regulatory process as prescribed in this regulation when reviewing their existing publications. This review will follow the same procedural steps outlined for the development of new regulations.
 - b. In selecting regulations to be reviewed, proponents will consider such criteria as—
 - (1) The requirement for the regulation.
 - (2) Costs and benefits of the regulation to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures.
 - (3) The type and number of complaints or suggestions received.
 - (4) Burdens imposed directly or indirectly by the regulation to both the public and other government entities.
 - (5) Elimination of inconsistent, incompatible, overlapping, or duplicative regulations.
 - (6) Length of time since the regulation has been reviewed for scientific, technological, economical, or administrative changes.

Chapter 2 Information to be published in the Federal Register

2-1. Acts to use for publishing

The Administrative Procedure Act (APA), as amended by the Freedom of Information Act (FOIA) requires that certain policies, practices, procedures, and other information concerning the DA be published in the FR for the guidance of the

public. In addition, various statutory and nonstatutory authorities, as applicable, may require certain actions and studies performed in conjunction with the publication of the regulation. In general, this information explains where, how, and by what authority the Army performs any of its functions that affect the public. This chapter describes what information must be published and the effect of failing to publish it.

2-2. Information to be published

In deciding which information to publish, consideration will be given to the basic objective of informing all interested persons of how to deal effectively with the DA. Subject to the exceptions provided in paragraph 2-5 of this regulation, information to be currently published will include—

- a.* Descriptions of the Army's central and field organization and the established places at which, the officers from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions.
- b.* Procedures by which the Army conducts its business with the public, both formally and informally.
- c.* Rules of procedures, descriptions of forms available or the places at which forms can be obtained and instructions as to the scope and contents of all papers, reports, or examinations.
- d.* Substantive rules/regulations of applicability to the public adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Army.
- e.* Documents that confer a right or privilege on a segment of the public or have a direct or substantial impact on the public or any significant portion of the public.
- f.* Documents that prescribe a course of conduct that must be followed by persons outside the government to avoid a penalty, or secure a right or privilege.
- g.* Documents that impose an obligation on the general public or members of a class of persons outside the U.S. Government.
- h.* Rules (significant) that may—
 - (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way, the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, tribal governments or communities.
 - (2) Create a serious inconsistency or otherwise interfere with an action taken by another agency.
 - (3) Materially alter the budgetary impact of entitlements, grants, user fees, loan programs or the rights, and obligations thereof.
 - (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles of EO 12866.
- i.* Open, partially-closed, and closed meetings which require members to take action on behalf of the Army where such deliberations determine or result in the joint conduct or disposition of Army business. Notices for meetings will be published a minimum of 15 calendar days prior to date of meeting or as prescribed by statute. Sunshine Act meetings are published in compliance with 5 USC 552b(e)(3); attendance at these meetings may be restricted for reasons of national security or for reasons indicated in 5 USC 552b(c). Notice for Sunshine Act meetings must be published at least 1 week prior to the date of the meeting (5 USC 552b(e)).
- j.* Establishment or renewal of advisory committees are to be published in accordance to their directives, statutory, and/or nonstatutory authority.
- k.* Public information collection requirements in compliance with the Paperwork Reduction Act (PRA) (44 USC 3501 et seq).
- l.* Descriptions of particular programs, policy, or procedures in detail such as—
 - (1) Decisions and rulings.
 - (2) Grant application deadlines.
 - (3) Availability of environmental impact statements.
 - (4) Delegations of authority.
 - (5) Issuance or revocation of licenses.
 - (6) Hearings and investigations.
- m.* Each amendment, revision, or repeal of the foregoing.

2-3. Requirements pertaining to the information to be published

The following procedures will be completed before submitting rules/regulations for publication—

- a.* An economic analysis (EA) of the proposed or existing regulation. The EA should assess the effects of the regulation on the State, local, and tribal governments, and the private sector. An EA threshold of an annual effect on the economy of \$100 million or more has been established for all regulations (EO 12866).
- b.* Regulations containing collection of information requirements will be forwarded through the DCS, G-1 (DAPE-ZXI-RM) to OMB prior to publication as a proposed rule in the FR. In addition, the proponent will address any collection of information comments filed by the Director, OMB, or the public in the final rule.

c. Statutory and nonstatutory authorities mandate regulatory review of all DA proposed, interim, final, and withdrawn rules/regulations. The results are published in the semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions. Under the requirements of regulatory review, the proponent will notify RMDA (AHRC-PDD-RP) when—

- (1) Drafting a regulation that would affect the public.
- (2) Reviewing regulations for revision or rescission.
- (3) Rescinding a regulation.

2-4. Incorporation by reference

a. Incorporation by reference allows the proponent to comply with the requirements to publish regulations in the FR by referencing materials published elsewhere (for example, materials that may be purchased from the Government Printing Office (GPO) or depository libraries or are available for review at Army installations). Incorporated material has the same force and legal effect as any other properly issued regulation. Before a document can be incorporated by reference, the proponent must determine that it is available to the public (see 5 USC 552(a) and 1 CFR Part 51).

b. Material is eligible for incorporation by reference if it—

- (1) Is published data, criteria, standards, specifications, techniques, illustrations, or similar materials.
- (2) Is reasonably available to and usable by the class of persons affected by the publication.
- (3) Does not reduce the usefulness of the FR publication system.
- (4) Benefits the Federal Government and members of affected classes.
- (5) Substantially reduces the volume of material published in the FR.

c. Incorporation by reference is not acceptable as a complete substitute for promulgating in full the material required to be published. It may, however, be utilized to avoid unnecessary repetition of published information already reasonably available to the class of persons affected. Examples include—

- (1) Construction standards issued by a professional association of architects, engineers, or builders.
- (2) Codes of ethics issued by professional organizations.
- (3) Forms and formats publicly or privately published and readily available to the person required to use them.

d. Proposals for incorporation by reference will be submitted to RMDA (AHRC-PDD-RP) by letter giving an identification and subject description of the document statement of availability, indicating document will be reasonably available to the class of persons affected, where and how copies may be purchased or examined, and justification for the requirement to incorporate by reference. The request will be submitted to RMDA (AHRC-PDD-RP) at least 25 working days before the proposed date for submission of the incorporation by reference notice for the FR. The 25 working day period begins when RMDA receives the request.

e. RMDA will consult with the Director, OFR concerning each specific request and will notify the proponent of the outcome of the consultation.

f. The proponent will submit to RMDA (AHRC-PDD-RP) a general notice upon approval from the Director, OFR to the proposal for incorporation by reference.

g. Requirements for updating material incorporated by reference—

- (1) An amendment to the CFR must be published in the Federal Register.
- (2) The proponent must provide RMDA a copy of the incorporated material, as amended or revised, to submit to the OFR.
- (3) RMDA will notify the Director, OFR of the changes.

h. The proponent will notify RMDA within 10 working days if the rule does not go into effect or when the rule containing the incorporation by reference is removed.

2-5. Exceptions

a. The Army will not publish rules in the Federal Register that—

(1) Involve any matter pertaining to a military or foreign affairs function of the United States which has been determined under the criteria of an Executive Order or statute to require a security classification in the interests of national defense or foreign policy.

(2) Involve any matter relating to Department of the Army Management, personnel, or public contracts, including nonappropriated fund contracts.

(3) Constitute interpretive rules, general statements of policy or rules of organization, procedure or practice.

(4) Merely interpret a rule already adopted by a higher element within the Department of the Army or by the Department of Defense.

b. A rule issued at the installation level that affects only the people near a particular post does not ordinarily apply to the general public; therefore, the Army does not usually publish it in the FR.

c. It is not necessary to publish in the FR any information that comes within one or more of the exemptions to the FOIA (5 USC 552(b)), as implemented by AR 25-55, paragraph 3-200.

2-6. Procedures

All matters to be published in accordance with this chapter will be submitted to RMDA (AHRC-PDD-RP), in the proper format outlined in appendixes B and C. As provided in paragraph 1-4e(3) of this regulation, Army Civil Works proponents who are proposing rules for publication in Titles 33 and 36 of the CFR may submit the required documents directly to OFR but must otherwise comply with the provisions of this regulation.

2-7. Effect of not publishing

The Army cannot require the general public to comply with, or be adversely affected by, a policy or requirement, as determined in paragraph 2-2, until it is published in the FR.

Chapter 3

Inviting public comment on certain proposed rules and submission of petitions

3-1. General

Public comment must be sought on certain proposed rules that are required to be published in accordance with chapter 2 of this regulation. All regulations affecting the public will be forwarded to RMDA (AHRC-PDD-RP) for review and coordination with OMB. This chapter sets forth the criteria and procedures for inviting public comment before publication.

3-2. Applicability

a. These provisions apply only to those DA rules or portions that—

- (1) Are promulgated after the effective date of this regulation.
- (2) Must be published in the FR in accordance with chapter 2 of this regulation.
- (3) Have a substantial and direct impact on the public or any significant portion of the public.
- (4) Do not merely implement a rule already adopted by a higher element within the DA or by the Department of Defense (DOD).

b. Unless otherwise required by law, the requirement to invite advance public comment on proposed rules does not apply to those rules or portions that meet any of the criteria listed in the paragraphs (1),(2),(3),(4), or (5), below—

- (1) Do not come within the purview of paragraph 3-2a, above.
- (2) Involve any matter pertaining to a military or foreign affairs function of the United States, which has been determined under the criteria of an EO or statute to require a security classification in the interests of national defense or foreign policy.
- (3) Involve any matter relating to Department of the Army management, personnel, or public contracts; for example, Armed Services Procurement Regulation, including non-appropriated fund contracts.
- (4) Constitute interpretative rules, general statements of policy, or rules of organization, procedure, or practice.
- (5) The proponent of the rule determines for good cause that inviting public comment would be impracticable, unnecessary, or contrary to the public interest. This provision will not be utilized as a convenience to avoid the delays inherent in containing and evaluating prior public comment (see para 3-8).

3-3. Procedures when proposing rules

a. A description of the proposed rule will be forwarded to RMDA (AHRC-PDD-RP) for regulatory and OMB review. The RMDA will provide a regulation identifier number (RIN), used to identify and report the rule in the Unified Agenda to the proponent once OMB has approved the rule for publication in the Proposed Rules section of the FR. Proposed rules that have unresolved issues will not be published in the FR.

b. The preamble and the proposed rule will be prepared by the proponent. Preparation of the preamble and the proposed rule will be in accordance with guidance contained in appendixes B and C.

c. Public comment will be invited within a designated time, not less than 60 days prior to the intended adoption of the proposed rule.

d. Rulemaking proponents will submit the original and three copies of the proposed rule and the preamble, in the prescribed format, to RMDA (AHRC-PDD-RP). The RMDA will ensure that the approved rules comply with 5 USC 601, 44 USC Chapter 44, FR, executive and legislative requirements, and have the necessary coordination with OMB prior to publication. Upon OMB approval, the RMDA will certify and submit the documents to the OFR for publication as a proposed, interim, or final rule, as applicable.

e. If no action has occurred within 1 year of publication, the proposed rule will be considered for withdrawal, unless the proponent provides justification to RMDA (AHRC-PDD-RP). If the proponent determines that the proposed rule should be withdrawn, the proponent will submit a document to RMDA (AHRC-PDD-RP) to be published in the FR withdrawing the proposed rule. The withdrawal of the proposed rule will be reported in the next edition of the Unified Agenda.

f. Civil Works projects under the ASA(CW) will submit updated and proposed Unified Agenda items to AASA.

3-4. OMB Control Number

Each rule OMB reviews under the PRA is assigned an OMB control number, which becomes its identifier throughout its life.

3-5. Consideration of public comment

a. Following publication of a notice of proposed rulemaking, all interested persons will be given an opportunity to participate (60 days) in the rulemaking through the submission of written data, views, and arguments to the proponent of the proposed rulemaking concerned.

b. If the proponent of the rule determines that it is in the public interest, a hearing or other opportunity for oral presentation of view may be allowed as a means of facilitating public comment. Informal consultation by telephone or otherwise may also be utilized to facilitate presentation of oral comments by interested persons. All hearings or other oral presentations will be conducted by the proponent of the rule in a manner prescribed by them. A hearing file will be established for each hearing. The hearing file will include—

- (1) Public notices issued.
- (2) Request for the hearing.
- (3) Data or material submitted in justification thereof.
- (4) Materials submitted in opposition to the proposed action.
- (5) Hearing transcript.
- (6) Any other material as may be relevant or pertinent to the subject matter of the hearing.

c. There is no requirement to respond, either orally or in writing, individually to any person who submits comments with respect to a proposed rule. The proponent of the rule, however, may do so as a matter within their discretion.

3-6. Procedures when publishing adopted rules

a. After careful consideration of all relevant material submitted, the proponent of the rule will make such revisions in the proposed rule appear necessary in light of the comments received.

b. If it is impractical for the rule proponent to finalize the rule after the comment period, due to extensive unresolved issues, the proponent will publish a document withdrawing the proposed rule.

c. The proponent will prepare a preamble for publication with the final rule. The proponent will discuss in the preamble the comments received in response to the proposed rule and the decision to accept or reject the comments in the revision to the proposed rule. Preparation will be in accordance with guidance contained in appendixes B, and C, and figure B-2.

d. The original and three copies of the preamble and revised final rule will be forwarded to RMDA (AHRC-PDD-RP) in the proper format. The RMDA will then prepare the required certification and submit the documents to the OFR for publication in the form of an adopted rule.

e. The proponent will provide to the RMDA (AHRC-PDD-RP) a copy of the final rule, a completed OMB Form, "Submission of Federal Rules Under the Congressional Review Act" (available at www.whitehouse.gov/WH/EOP/OMB and www.gao.gov), and a concise statement about the rule within 14 days of publication in the FR. The proponent will identify whether it is a major or a substantive/nonsignificant rule, its proposed effective date, significant issues of interest, and a cost-benefit analysis of the rule, as applicable. The RMDA will submit a copy of all final rules to both Houses of Congress and the GAO per CRA.

f. Army Civil Works rulemaking proponents, when proposing rules governed by paragraph 1-4e of this regulation, may forward the documents prescribed in paragraphs 3-6d and e directly to OFR. Army Civil Works proponents are responsible for submitting a copy of the final rules to the Congress and GAO in accordance with paragraph 3-6e.

3-7. Submission of petitions

Each proponent of a rule will grant to any interested person the right to submit a written petition calling for the issuance, amendment, or repeal of any rule to which this chapter applies or would apply if issued, as specified in paragraph 3-2. Any such petition will be given full and prompt consideration by the proponent. If compatible with the orderly conduct of public business, the appropriate official may, at their discretion, allow the petitioner to appear in person for the purpose of supporting this petition. After consideration of all relevant matters by the proponent, the petitioner will be advised in writing by the proponent of the disposition of any petition, together with the reasons supporting that disposition. This provision does not apply to comments submitted on proposed rules in paragraph 3-5.

3-8. Cases in which public comment is impractical

a. Whenever a rulemaking proponent determines for good cause that inviting public comment regarding a proposed rule would be impractical, unnecessary, or contrary to the public interest, the proponent will prepare a brief statement of the reasons supporting this determination for incorporation in the preamble to the adopted rule. The preamble and adopted rule will then be published as outlined in paragraphs 3-6c and d.

b. Alternatively, the proponent may request RMDA (AHRC-PDD-RP) (by memorandum) to adopt and publish in the FR a separate rule exempting from the prepublication notice provisions of this regulation those specific categories of rules for which the rulemaking proponent has determined that public comment would be unnecessary, impractical, or contrary to public interest. The request to RMDA will contain an explanation of the reasons why the proponent believes that a particular category of rule or rules should not be published in proposed form for public comment and a legal review by the proponent's servicing legal office. If RMDA, in coordination with the Office of the Army General Counsel, agrees that public comment should not be invited with respect to the cited category, the proponent will adopt and publish a separate rule in the FR exempting such rule or rules from the requirements of this regulation. This separate rule will include an explanation of the basis for exempting each particular category from the provisions of this regulation.

Appendix A References

Section I Required Publications

AR 25-50

Preparing and Managing Correspondence. (Cited in app B.)

AR 25-55

The Department of the Army Freedom of Information Act Program. (Cited in para 2-5c.)

AI 102

Office of the Secretary of Defense Federal Register System Consultation and Coordination with Indian Tribal Governments. (Cited in fig B-2.) <http://www.dtic.mil/whs/directives>

EO 12866

Regulatory Planning and Review. (Cited in paras 1-1, 1-4b, 1-4d(3), 2-2h(4), 2-3a, and app F.) www.archives.gov/federal_register/executive_orders

EO 12988

Civil Justice Reform. (Cited in fig B-2.) www.archives.gov/federal_register/executive_orders

EO 13045

Protection of Children from Environmental Health Risks and Safety Risks. (Cited in fig B-2.) www.archives.gov/federal_register/executive_orders

EO 13132

Federalism. (Cited in fig B-2.) www.archives.gov/federal_register/executive_orders

EO 13211

Actions Concerning Regulation That Significantly Affect Energy Supply, Distribution, or Use. (Cited in fig B-2.) www.archives.gov/federal_register/executive_orders

1 CFR

Administrative Committee of the Federal Register. (Cited in para 1-1.) www.gpoaccess.gov/cfr/index.html

1 CFR Part 51

Incorporation by Reference. (Cited para 2-4a.) www.gpoaccess.gov/cfr/index.html

32 CFR Part 336

Publications of Proposed and Adopted Regulations Affecting the Public. (Cited in para 1-1.) www.gpoaccess.gov/cfr/index.html

41 CFR Part 102-3

Federal Advisory Committee Management. (Cited in app E-1a(2).) www.gpoaccess.gov/cfr/index.html

2 USC 1532

Unfunded Mandates Reform Act. (Cited in para 2-3a.) www.uscode.house.gov/usc.htm

5 USC Appendix

Federal Advisory Committee Act. (Cited in app E-1a(2).) www.uscode.house.gov/usc.htm

5 USC Chapter 8

Truth in Regulating Act. (Cited in paras 1-1, 3-6e, and fig B-2.) www.uscode.house.gov/usc.htm

5 USC 551 et seq.

Administrative Procedure Act. (Cited in paras 1-1, 2-1, apps B-1, and E-1a(1).) www.uscode.house.gov/usc.htm

5 USC 552(a)

Freedom of Information Act. (Cited in paras 1-1, 2-1, 2-4a, 2-5c, and app C-4a(4).) www.uscode.house.gov/usc.htm

5 USC 552b

Government in the Sunshine Act. (Cited in paras 2-2f, 2-5a, and app E-3.) www.uscode.house.gov/usc.htm

5 USC 601 et seq.

Regulatory Flexibility Act. (Cited in paras 1-1, 2-3a, and 3-3d.) www.uscode.house.gov/usc.htm

42 USC Chapter 8

Small Business Regulatory Enforcement Fairness Act. (Cited in fig B-2.) www.uscode.house.gov/usc.htm

42 USC 4321 et seq.

National Environmental Policy Act of 1969. (Cited in fig B-2.) www.uscode.house.gov/usc.htm

42 USC Chapter 8

Small Business Regulatory Enforcement Fairness Act. (Cited in fig B-2.) www.uscode.house.gov/usc.htm

44 USC Chapter 15

Federal Register and Code of Federal Regulations. (Cited in paras 2-2f, 3-3d, and app B-1.) www.uscode.house.gov/usc.htm

44 USC Chapter 35

Paperwork Reduction Act. (Cited in paras 2-2h and app E-1a(7).) www.uscode.house.gov/usc.htm

Section II**Related Publications**

A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.

AR 25–30

The Army Publishing Program.

EO 13175

Consultation and Coordination with Indian Tribal Governments. www.archives.gov/federal_register/executive_orders

EO 13212

Actions to Expedite Energy Related Projects. www.archives.gov/federal_register/executive_orders

DOD Directive 5025.1

DOD Directive System. www.dtic.mil/whs/directives

Federal Register Handbook

FR Handbook. www.archives.gov/federal_register/index.html

United States Government Printing Office Style Manual

GPO Style Manual. www.gpoaccess.gov/stylemanual

Section III**Prescribed Forms**

This section contain no entries.

Section IV**Referenced Forms****DA Form 260**

Request for Publishing.

Appendix B Preparation of Rulemaking Documents

B-1. General

The Federal Register Act (44 USC Chapter 15) and the APA (5 USC Section 551) define the requirements for notices and the promulgation of proposed, interim, and final rules in the FR system. The rulemaking document is an announcement to the public that the Army proposes to amend the CFR and interested individuals are given an opportunity to comment on the development of the final amendment. Generally, the proposed rulemaking document will become the adopted rule; therefore, careful consideration should be given to correct format and the Army and user viewpoint.

a. Chapters separate each title of the CFR and each chapter is numbered in roman numerals (I, II, III, and so forth); they can be divided by subchapter, if required, and are lettered in capitals (A, B, C, and so forth) to group related parts.

b. Each chapter or subchapter is divided into parts, numbered in Arabic numerals and assigned to chapters as follows: chapter I, parts 1 to 199, chapter II, parts 200 to 299, chapter III, parts 300 to 399, and so forth (see figure B-1).

c. Each part consists of a consolidated body of rules applying to a single function of the DA. When required, subparts are identified by capital letters to group related elements of information.

d. Section numbers (within parts) include the number of the part set off by a decimal point preceded by the symbol "§ ." For example, Part 400, Section six, is expressed "§ 400.6." The section is the basic unit of the CFR and should consist of a short, clear presentation of one regulatory proposition.

e. Sections are divided into paragraphs. All paragraphs are indented and can be subdivided into the designations shown in table B-1. Sections consisting of a single paragraph are not designated; however, multiple undesignated paragraphs are not permitted, as they are difficult to cite in other parts of the CFR.

Table B-1
Paragraph sub-divisions

Term	Symbol
Paragraph	(a), (b), (c), and so forth.
For further subdividing of a paragraph	(1), (2), (3), and so forth.
	(i), (ii), (iii), and so forth.
	(A), (B), (C), and so forth.
	(1), (2), (3), and so forth.
	(i), (ii), (iii), and so forth.

Notes:

For easier reading detailed subdividing (more than three levels) of a section is to be avoided where possible in favor of shorter better-expressed sections.

CFR Title —▶ Title 32—National Defense
CFR Subtitle—▶ Subtitle A—Department of Defense
Chapter —▶ CHAPTER V—DEPARTMENT OF THE ARMY

(Parts 400-629)

Subchapter—▶ SUBCHAPTER A—AID OF CIVIL AUTHORITIES
AND PUBLIC RELATIONS

Part —▶ *Part*
400-500 [Reserved]
501 Employment of troops in aid of civil authorities
502 Relief assistance
503 Apprehension and restraint
504 Obtaining information from financial institutions
505 The Army Privacy Program
507 Manufacture and sale of decorations, medals,
badges, insignia, commercial use of heraldic
designs and Heraldic Quality Control Program
508 Competition with civilian bands
510 Chaplains
513 Indebtedness of military personnel
516 Litigation
518 The Army Freedom of Information Act Program
519 Publication of rules affecting the public
525 Entry authorization regulation for Kwajalein
Missile Range
527 Personal check cashing control and abuse
prevention

SUBCHAPTER B—CLAIMS AND ACCOUNTS

534 Military court fees
536 Claims against the United States
537 Claims on behalf of the United States
538 Military payment certificates

SUBCHAPTER C—MILITARY EDUCATION

542 Schools and colleges
543-544 [Reserved]

Figure B-1. Examples of basic subdivisions of CFR

B-2. Format

- a.* Use 8½ by 11-inch single-sided white paper.
- b.* Number all pages consecutively.
- c.* One-inch margins at the top, bottom, and right side; the left side margin is one and half inches.
- d.* Double space all primary text and single space—
 - (1) Table of contents.
 - (2) Quoted material when set apart from regular text.
 - (3) Footnotes and notes to tables.
 - (4) Tables.
 - (5) Examples.
 - (6) Formulas.
 - (7) Authority citations.
 - (8) Signature and title.
- e.* Rulemaking documents should be written clearly and concisely. A separate action must be submitted for each type of document to be published in the FR, "Proposed Rules," "Rules and Regulations," and "Notices." Documents that would appear in two different categories of the FR will not be combined; instead, it is recommended that they cross-reference each other.

B-3. Billing code

Billing codes allow the GPO to be reimbursed for documents published in the FR. The billing code should be the first heading on the first page of your document. Billing codes are assigned by your organization.

B-4. Signature

- a.* Rulemaking documents will be signed by the head of a DA staff agency, or the commander of an Army command, their authorized representatives, or other designated officials at subordinate level as authorized by AR 25-50 for correspondence.
- b.* The signature block will be placed on a page, which includes some material that can be identified with the text. Do not place the signature block on a separate page from the text. The signature block will consist of the issuing official's typed name, grade, and position title for military officials or position title for civilian officials. When someone other than the issuing official signs (for) the document, the actual signer's name and title must be typed underneath the signature; the OFR will reject any document that is signed incorrectly.

B-5. Capitals

The following guidance will be followed in use of capitals:

- a.* The title "FEDERAL REGISTER" when the dates are to be computed by the FR.
- b.* CHAPTER HEADINGS and PART HEADINGS are typed in all capitals for rules documents.
- c.* PREAMBLE CAPTIONS are typed in all capitals in rulemaking and notice documents.

B-6. Underlining

- a.* Do not underline for emphasis or for names of books or court cases or when foreign phrases are used. Use quotation marks for names of books or court cases.
- b.* The following may be underlined:
 - (1) Scientific terms.
 - (2) Ordering paragraphs or statements.
 - (3) Paragraph headings may be underlined; however, they must be underlined consistently within the section.
 - (4) Court cases.
 - (5) Definitions (only the terms).
 - (6) Reference to the FR.

B-7. Illustrations, forms, and tables

- a.* Maps, diagrams graphs, or other pictorial material will be included in documents only when necessary for compliance purposes, or where they aid in understanding. If an illustration is essential, the original artwork or a clear reproduction must accompany the original document and copies. If an amendment is made to the illustration at a later date, a new drawing must be submitted with the amendment.

b. Tables and forms should be prepared according to the "United States Government Printing Office Style Manual." The GPO Style Manual is also available at www.gpoaccess.gov/stylemanual/browse.html.

c. Original artwork for a proposed rule or notice will be returned only if the proponent attaches a memo and a self addressed envelope to the original document requesting that the OFR return the artwork. Original artwork for an interim or final rule will not be returned; the OFR uses it in the CFR.

B-8. Abbreviations

a. The following guidance will be used for abbreviations:

- (1) "FR" is "Federal Register."
- (2) "CFR" is "Code of Federal Regulations."
- (3) "U.S.C." is "United States Code."
- (4) "Pub. L." is "Public Law."
- (5) "Stat." is "U.S. Statutes at Large."
- (6) "A.M. or P.M." is time designation.
- (7) "E.O." is "Executive order."
- (8) "Proc." is "Proclamation."
- (9) "Sec." is section of a public law or United States Code.

b. Abbreviations for "Pub. L.," "E.O.," and "Proc." are used only in the authority citation; otherwise spell them out.

B-9. Corrections

Minor changes can be made in typed documents by making the correction on all copies in ink and placing your initials in the margin opposite the change. Correction tape will not be used. Correction tape becomes detached and causes errors in the printed version and in the permanent record retained by the National Archives and Records Administration.

B-10. Requirements to publish a rule

a. The proponent of the rule will provide one paper copy and an electronic version of the rule to RMDA (AHRC-PDD-RP) for editorial review. The RMDA (AHRC-PDD-RP) will edit, reformat the rule, and return the electronic version, with the recommended changes.

b. A statement verifying that the rule will be coordinated with appropriate officials and General Counsel before submission for publication must be provided to the RMDA (AHRC-PDD-RP).

c. The original document is submitted, by RMDA (AHRC-PDD-RP), to the OFR and becomes a part of the National Archives of the United States. It should be typed and have the appearance of a formal document prepared for public inspection. Photocopies may be used as originals provided the copies are of high quality and each copy is signed in ink.

d. Three legible copies must be submitted with the original. The issuing official can sign all copies (duplicate originals) or RMDA (AHRC-PDD-RP) can certify the copies as true copies of the original signed document.

e. Disk submission can be included with the paper copies, provided that—

- (1) A verification/certification statement is included in the publication request.
- (2) The file is on a high density, 3.5 inch, IBM formatted disk.
- (3) The rule must be the only file on the disk.
- (4) The file must be on ASCII text format, Word Perfect 6.1 or earlier, and Microsoft Word 6.0 or later.
- (5) The disk is properly labeled; DOD, DA, filename, file format, and name, CFR citation, or RIN corresponding to the paper document.

f. The questionnaire in appendix F must be completed and submitted to the RMDA (AHRC-PDD-RP) for each rule within 14 days of publication date in the FR.

B-11. Preamble requirements

a. The proponent submitting a notice of proposed, interim, or final rule document for publication will prepare a preamble that will inform the public, who is not an expert in the subject area, of the basis and purpose for the notice or rule.

b. The preamble will be in the block style format and contain the information shown in figure B-2.

c. The body text of the rule will be included before the date and signature block for short amendments. For long and involved rules include the body text after the signature block.

d. If implementing a joint rule, the two or more agencies must be identified in the heading and preamble of the rule. The authorized official of each agency must sign the rule.

e. When drafting a proposed or interim rule you may or may not invite public comments. For a proposed rule requesting public comments, the public comment period will not be less than 60 days from the date of publication (E.O. 12866, sec. 6(a)(1)).

f. All executive orders and Federal Acts that may be applicable to the Army will be addressed in the preamble. The RMDA (AHRC-PDD-RP) will provide you with a list of current orders and acts.

g. By providing answers to the following questions, the drafter can prepare a preamble that explains the actions taken—

- (1) What action is being taken? Why? What will be its intended effect?
- (2) Are instructions provided for public participation? Will there be any formal or informal hearings?
- (3) Did the comments received on the proposal substantiate the need for it?
- (4) How many comments support the proposal? How many opposed it? What types of groups were for it or against it?
- (5) Did the comments received on the proposal bring out any additional facts or information?
- (6) Will the persons affected or target audience understand the proposal?
- (7) Were any alternatives suggested as a result of the proposal? Do any of them require further consideration? Are the reasons for their rejection or adoption explained?
- (8) Are there any agency-developed changes in the final rule that were not in the proposal? Are they fully explained?
- (9) Are all of the significant comments received on the proposal discussed and answered?
- (10) Were applicable statutes addressed?
- (11) Have you cited any related documents and provided their FEDERAL REGISTER citations?

Sample Preamble--Rule

BILLING CODE: 3710-(Insert appropriate code)

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR (Part or Subpart No.)

(Program Account No.)

RIN (Regulation Identifier No.)

(Title of the rule)

AGENCY: Department of the Army, DOD. (Agency's name)

ACTION: Proposed, Final, or Interim Final Rule.

SUMMARY: The Department of the Army proposes to amend its regulations to [insert a brief summary of what the regulation is about.] [Agency or command name] is amending (or revising or adding) the regulations because (insert a brief summary of why the agency is taking this action.) Do not include citations to statutes or the CFR (other than the current document). If the court action caused the revision, do not include legal citations. The regulations will describe the intended effect of the document, not how it affects the CFR. In this discussion, refer to an act of Congress by the popular name of the act. Do not use qualifications, exceptions, or specific details. Be clear and concise.

DATES: Presents the "when" of the document, date format MMDDYYYY. It includes the dates within the document that are essential to the rulemaking proceedings. The following should be included, when applicable: 1) Effective date; 2) Confirmation of effective dates; 3) Comment deadlines; 4) Public hearings date (if any); 5) Compliance dates; 6) Applicability dates; and 5) Other dates relevant to public knowledge of the proceeding.

ADDRESSES: Include any address that a participant in a rulemaking proceeding needs to know. Addresses appropriate for inclusion include addresses for: 1) Mailing public comments; 2) Hand delivering public comments; 3) Attending a public hearing (if applicable); and 4) Examining any material available for public inspection.

FOR FURTHER INFORMATION CONTACT: Insert contact's name and telephone number.

SUPPLEMENTARY INFORMATION:

a. *Background:* Limit this discussion to historical and present situation necessitating the proposed rule. It should include a statement about the statutory authority supporting the rule, any court cases that apply, prior proposed rulemakings on the issue that are still outstanding and how they relate to this proposal.

b. *Public Comments Procedures:* Describe the procedures the public is to use to provide comments.

c. *Discussion of Proposed Rule:* This discussion should state what the rule would do and why Department of the Army is proposing the rule. It should include a specific, section-by-section analysis of how the proposed rule impacts

Figure B-2A. Sample of Preamble-Rule format

[agency's name] customers and how it changes existing regulatory provisions. For example, if a particular section is being deleted because it duplicates provisions from a statute or another regulation, the duplicated regulation or code section should be cited.

d. *Procedural Requirements*: Under this section, the proponent must address each statute or E.O. listed below and its relevance to the proposed rule. They must also comply with any other requirements of the statute or E.O. if they determine in consultation with their servicing legal office that it is applicable. If it does not apply, that should be stated and why.

Regulatory Flexibility Act:

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601, *et seq.* to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The proponent must determine if the proposed rule meets the threshold requirements of the act that requires the preparation of a Regulatory Flexibility Analysis, if it does not apply, so state. It is recommended that this determination be made in consultation with the servicing legal office.

Unfunded Mandates Reform Act:

Under section 202 of the Unfunded Mandates Reform Act (UMRA), 2 U.S.C. § 1532, agencies must prepare a budgetary impact statement to accompany any proposed rule that includes a Federal mandate that may result in estimated costs to State, local or tribal governments in the aggregate, or to the private sector, of \$100 million or more. If it applies, the provisions of the UMRA must be met, if it does not apply, so state. It is recommended that this determination be made in consultation with the servicing legal office.

National Environmental Policy Act:

The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, *et. Seq.*, contains specific and detailed requirements for agencies implementing any rules or regulations that may have an adverse impact on the environment. If NEPA does not apply, so state. It is recommended that this determination be made in consultation with the servicing legal office.

Paperwork Reduction Act:

The Paperwork Reduction Act (PRA), 44 U.S.C. Chapter 35, requires all federal agencies to obtain approval from the Office of Management and Budget (OMB) before implementing rules that require the collection of information from the public. If the proposed rule involves collection of information from the public, coordination with OMB and various other requirements must be accomplished prior to publication in the Federal Register. If the PRA does not apply, so state. It is recommended that this determination be made in consultation with the servicing legal office.

Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Property Rights):

The proponent must determine if the proposed rule represents a government action capable of interference with constitutionally protected property

Figure B-2B. Sample of Preamble-Rule format—Continued

rights and which may cause the taking of private property. If the taking of private property will result a Takings Assessment (TA) and other requirements of the E.O. must be met. In some instances the military is exempt from this order. If no private property rights are impaired as a result of the proposed rule, so state. It is recommended that this determination be made in consultation with the servicing legal office.

Executive Order 12866 (Regulatory Planning and Review):

The proponent must determine if the proposed rule is significant under the criteria set forth in the E.O. Additional information and suggested wording for "Not Significant" and "Significant" rules is provided below. It is recommended that this determination be made in consultation with the servicing legal office.

Not Significant: According to the criteria listed in section 3(f) of E.O. 12866, [agency's name] has determined that the proposed rule is not a significant regulatory action. As such, the proposed rule is not subject to Office of Management and Budget review under section 6(a)(3) of the E.O.

Significant: This proposed rule is a significant regulatory action under section 3(f) of E.O. 12866 and requires an assessment of potential costs and benefits under section 6(a)(3) of that E.O. [If the proposed rule is significant under E.O. 12866, include a summary of the initial regulatory impact analysis, and state that [agency's name] has placed the full analysis on file in the [agency's name] Administrative Record at the address specified previously (see "ADDRESSES"). E.O. 12866 defines a "significant regulatory action" as a rule that may: (1) have an annual effect on the economy of \$100 million or more; (2) adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) create a serious inconsistency or otherwise interfere with other agency action; (4) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of entitlements, grants, user fees, or loans; or (5) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this E.O.)

Executive Order 12988 (Civil Justice Reform):

The proponent does not need to refer to this in the preamble, but for any major action the administrative record should include evidence that the requirements of this E.O. were considered. See the E.O. for a list of the requirements. Briefly, the standards to meet are: (1) eliminate drafting errors; (2) eliminate needless ambiguity; (3) minimize needless litigation (describe any statutes of limitation, preemptive effects, effects on existing Federal law, etc.); (4) provide clear and certain legal standards for affected conduct; and (5) promote simplification and burden reduction.)

(Not Applicable) [agency's name] has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of E.O. 12988.)

Executive Order 13045 (Protection of Children from Environmental Health Risk and Safety Risks):

E.O. 13045 requires each federal agency to make it a high priority to identify and assess environmental health risks and safety risks that may

Figure B-2C. Sample of Preamble-Rule format—Continued

disproportionately affect children and ensure that its policies, programs, activities, and standards address disproportionate risks to children that result from environmental health risks or safety risks. If the rule applies then the procedures outline in the E.O. must be met. If it does not apply, so state. It is recommended that this determination be made in consultation with the servicing legal office.

Executive Order 13132 (Federalism):

The proponent must determine if the proposed rule will have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. If the proposed rule has a substantial effect on the above, a Federalism Assessment and various other requirements of the E.O. must be met. If it does not apply, so state. It is recommended that this determination be made in consultation with the servicing legal office.

Executive Order 13211 (Actions Concerning Regulations that Significantly Affect Energy, Supply, Distribution or Use):

The proponent does not need to refer to this in the preamble, but for any major action the administrative record should include evidence that the requirements of this E.O. were considered. Briefly, a statement of energy effects shall be prepared by agencies and submitted to the Administrator of the Office of Information and Regulatory Affairs, OMB, for any significant energy matters that: 1) Have any adverse effects on energy supply, distribution, or use should the proposal be implemented; and 2) relating to reasonable alternatives to the action with adverse energy effects and expected effects of such alternatives on energy supply, distribution, and use. See the E.O. for a list of the requirements.

The principal author of this rule is (principal author, agency's mailing address, telephone (Commerical or FTS) (This portion is optional.)

List of Subjects in 32 CFR part XXX

(insert list of subjects)

Provides a common vocabulary for indexing rulemaking documents and is the basis for the CFR Index prepared by the OFR. It is the last item in the SUPPLEMENTARY INFORMATION section.

Dated:

(Signature of Official)

(Title)

(Words of Issuance.)

Accordingly, the Department of the Army proposes to amend 32 CFR part XXX as set forth below:

Or

For reasons discussed in the preamble the Department of the Army proposes to amend 32 CFR part XXX as follows:

Figure B-2D. Sample of Preamble-Rule format—Continued

[Regulatory Text]

Heading: **PART 502 – RELIEF ASSISTANCE** (State heading for each part, subpart, section, and appendix that is amended.)

Sec. (Table of Contents.)

502.1 Purpose and applicability.

502.2 Definitions.

1. The authority citation for Part 502 reads as follows: Sec. 3012, 70A Stat. 157; 10 U.S.C. 3012.

2. State item that is amended, revised, or removed text or provide the new regulatory text added to the CFR.

§ 502.1 Purpose and applicability.

(a) Sections 502.1 through 502.5 contain Department of the Army

Figure B–2E. Sample of Preamble-Rule format—Continued

B–12. Information services

The examples used in this regulation may not apply to all rulemaking documents. Additional examples and instructions are contained in the FR Handbook on Document Drafting, which is available from http://www.archives.gov/federal_register/index.html.

Appendix C
Proposed Rulemaking Document Procedures

C–1. Drafting proposed rules

A proposed rulemaking document includes the following:

a. A preamble giving the reader an explanation of the proposal, a statement of the time, place, and nature of public proceedings (hearings, opportunity to submit written comments, or both), and other information required by paragraph B-9.

b. Appropriate headings as shown in figure B-2.

c. Table of contents (see appendix B, figure B-2 and appendix D, para D-4b).

d. Authority citation (see appendix D, para D-8).

e. Words of issuance as discussed in paragraph D-2, appendix D.

f. Date of issuance and signature.

g. Full text of the proposed rule, amendment, or revision. If amending or revising a current CFR unit the proponent may republish unchanged text of the unit to provide a context for the amendment or revision (see appendix D, para D-3g).

C–2. Documents that affect proposals

a. A document which amends, supplements or in any way affects previously published proposals (other than adoption documents) must also be published in the "Proposed Rules" section of the FR. The document should be prepared with the same headings as the prior proposal document. In the text there must be specific reference to the previous proposal document, citing the FR volume and page.

b. Documents which affect proposals include those which—

(1) Extend time for comments.

(2) Notify of a meeting or hearing.

(3) Change the date or place of meetings or hearings.

- (4) Suspend, stay, terminate, or withdraw the rulemaking proceeding.
- (5) Correct the text.
- (6) Supplement a proposal.

C-3. Advance notice of proposed rules

a. An advance notice of proposed rulemaking is a preliminary inquiry prior to the issuance of a specific notice of proposed rulemaking. It is used to give the public an opportunity to participate in the decisions as to whether a rule change is necessary.

b. The advance notice of a proposal document is prepared in the same manner as a proposed rule. Explain the need for rulemaking, issues involved, and use specific questions for expert commentators to answer.

C-4. Incorporation by reference

a. Incorporation by reference allows the proponent to comply with publication requirements by referring to materials published elsewhere. Material incorporated by reference must have prior approval from the Director, OFR and has the same effect as any other properly published rule. The document drafted will—

- (1) Contain the words "incorporated by reference."
- (2) State the standard and/or material to be incorporated by: title, date, edition, author, publisher, and identification number of the publication.
- (3) State where and how copies can be examined and obtained.
- (4) Refer to 5 U.S.C 552(a).
- (5) State that the Director, OFR has approved of the incorporation by reference.
- (6) The preamble of the rule document must refer to the incorporation by reference in the DATES caption and the SUPPLEMENTARY INFORMATION section.

(a) Dates statement must contain the effective date of the document and the date approved by the Director, OFR. These dates are always the same.

(b) The List of Subjects in the SUPPLEMENTARY INFORMATION section must include the words "incorporation by reference."

b. When updating material incorporated by reference you must notify the RMDA (AHRC-PDD-RP) and submit the following—

- (1) An amendment to the CFR to be published in the FR per requirements in appendix B.
- (2) Provide two copies of the amended or revised incorporated material with your amendment.

Appendix D Adopted Rule Document Procedures

D-1. Drafting adopted rules

An adopted rule publication must include the following:

- a. *Billing Code*. Utilized by the GPO to bill for printing documents in the FR.
- b. *Appropriate headings*. The heading ties the document to the CFR and alerts the reader to the subjects covered. (See figure B-2 for placement and content.)
- c. *Preamble*. The Preamble provides the "who, what, where, why and when" of the rule. The captions of the preamble are to remain in the order shown in figure B-2.
 - (1) The Preamble identifies the DA, a specific command, and/or office as the proponent of the rule.
 - (2) If the adopted rule was published in the FR as a proposed rule, the preamble of the adopted rule must specifically reference the proposed version citing the FR publication date and page number.
 - (3) The RIN used in the proposed rule should as be used for the adopted rule.
 - (4) A preamble describes the contents of the document in layman's language. It should provide a concise general statement of the basis and purpose of the rule.
 - (5) It explains the relationship of the adopted rule to the proposed rule, including the nature and effect of any relevant public comments.
 - (6) It should contain an effective date, compliance date, or comment deadlines for an interim rule or direct final rule, expiration dates, as applicable and any other dates that may concern the public.
 - (7) The Preamble provides addresses (street address and e-mail or Web site) for submitting comments, meetings, or where material for public inspection is available.
 - (8) It provides the names and telephone number(s) of the proponent(s). At the discretion of the proponent e-mail address and street address can also be provided.
- d. *The List of Subjects*. List of subjects is used by the OFR to index the adopted rule in the CFR. It is the last item in the "SUPPLEMENTARY INFORMATION" section. Do not include a list of subjects when making corrections to previous documents and nomenclature changes.
 - e. *Words of issuance* (see D-2, below). (Effective date may appear here.)
 - f. *Body of text*.
 - (1) Headings for each part, subpart, section, and appendix amended.
 - (2) Table of contents.
 - (3) Authority citation. States under what authority the Army is changing the CFR.
 - (a) Statutory - Public Law and United States Code (U.S.C.)
 - (b) Nonstatutory - Presidential executive and administrative orders, Presidential Memorandum, DOD or DA policy or directive, OMB Circular, CFR regulations.
 - (4) Effective date (may appear here if required in body text).
 - (5) Amendatory language (see D-3, below).
 - (6) Text. All paragraphs should be indented, lettered, and/or numbered.
 - (7) OMB Control number. Required when rule contains collection of information requirements from the public.
 - (8) Pages. All pages should be numbered.
 - g. *Signature*. Printed name and title of signer.
 - h. *Date signed, optional*. (See figures B-2 and E-1 for examples.)

D-2. Words of issuance

The term "words of issuance" refers to the language in the document by which a codified document is legally prescribed and tied to the CFR. The words of issuance describe the general effect of the document and are always in the present tense, since the document itself is the act of promulgation. They usually precede the text but may also appear in the amendatory language preceding individual amendments and should contain the CFR title number, chapter number, and the subchapter number (if applicable) affected by the document. The action should be clearly stated: "*Accordingly, for reasons stated in the preamble, under the authority of 49 U.S.C 31132, 32 CFR Part 619, Program for Qualifying DOD Freight Motor Carriers, Surface Freight Forwarders, Shippers Agents, and Freight Brokers, is removed in its entirety.*"

D-3. Amendatory language

The text of a document must conform to the text of the CFR. The amendatory language uses standard terms to identify and describe the specific changes being made to the CFR. Eight of the most common terms used as words of issuance are defined and illustrated below. Examples of amendatory language are given in table D-1.

- a. *Amend* - "Amended" means that a CFR unit-title, subtitle, chapter, part, subpart, section, or paragraph - is partially changed.

b. *Add* - "Added" means a new unit or item is being inserted into the CFR.

c. *Nomenclature change* - Used to change term or phrase throughout the CFR unit, such as an office title or designation.

d. *Correct* - "Corrected" means the correction of a typographical or clerical errors in a recently published document. This should be handled as a change; refer to the published document, by identifying headings, date of publication, and FR page.

e. *Redesignate* - "Redesignated" means a CFR unit is being transferred to another position and assigned a new number. This should not be used merely to fill in the gaps created by removals or to make room for additions. For designating additions see paragraph D-5. Any major redesignations should be discussed in advance with the RMDA (AHRC-PDD-RP) staff. Contact the Federal Register Liaison Officer (FRLO) (DSN 328-6422 or commercial 703-428-6422).

f. *Remove* - "Remove" means an existing CFR unit is being deleted from the CFR because its authority has expired, the requirement no longer exists, or it has been legally terminated.

g. *Republish* - "Republish" is used when publishing an unchanged CFR unit to provide the context for the amendment, for the reader. The republished unit must be republished accurately.

h. *Reserve* - "Reserve" is used to fill in the gap of text, which was removed or to indicate where new or future text will be added to the CFR.

i. *Revise* - "Revise" means that a CFR unit is completely rewritten and is being presented in full text.

j. *Stay* - "Stayed" is used when the compliance date is temporarily postponed or the previous CFR unit is being restored.

k. *Suspend* - "Suspended" indicates a CFR unit is temporarily or indefinitely on hold. A suspended CFR unit is not enforceable.

l. *Withdraw* - "Withdrawn" means a rule that has not gone into effect (proposed rule) is being removed from the FR system. This term is not used for existing units in the CFR or for final rules that have passed their effective dates. Rules that are withdrawn are not enforceable.

Table D-1
Usage of Amendatory Language

Amendatory Language	Usage
Amend	Amend § 500.20 to remove paragraph (b) (5) and revise paragraph (c) (2) to read as follows:
Add	1) Add new paragraph (c) (3) to § 500.20 to read as follows... 2) Add § 500.20 to Subpart B to read as follows...
Nomenclature change	In part 500, revise all references to "Information Management Officer" to read "Director of Information Management."
Correct	On June 26, 2002, 67 FR 0000, in the third column, in § 501.20 (b)(5), correct "Director" to read "Deputy Director".
Redesignated	1) PART 490 [REDESIGNATED AS PART 500 AND AMENDED] 2) Redesignate Part 490 as Part 500 and revise it to read as follows: 3) Remove §§ 500.20 through 500.23 and redesignate §§ 501.24 through 501.27 as §§ 500.20 through 501.23, respectively.
Remove	1) § 500.20 [REMOVED] 2) In § 500.20, remove paragraph (b) (5).
Republish	§ 500.20 is republished as follows:
Reserve	Subpart B - [Removed and Reserved]
Revise	1) Revise Subpart B to read as follows: 2) Revise § 500.20 (b) (5) to read as follows
Stay	Effective June 1, 2002, 32 CFR §§ 500.20 and 500.22 are stayed until January 01, 2003.
Suspend	The provisions of 32 CFR § 500.20 are suspended pending outcome of hearing.
Withdraw	Proposed rule 32 CFR part 490 published on June 26, 2002, 57 FR 0000 is withdrawn.

D-4. Organization

a. Overall organization of text. Material in documents must be drafted exactly as it is to appear in the CFR. The structure of the CFR is covered in appendix B. The substantive text follows the table of contents. Rules should be organized in a logical and orderly arrangement that will promote reader understanding and facilitate reference. While there is no blueprint for all rules, many can be arranged in some variation as follows—

- (1) Statement of applicability, policy, or purpose, if necessary.
- (2) Definitions.
- (3) Important general rules-positive requirements sequenced in order of time or other logical arrangement.
- (4) Exceptions, exemptions, and subordinate provisions, or negative provisions, important enough to be stated as separate sections.
- (5) Results of compliance or noncompliance. An example of logical arrangement follows—

Table D-2
Logical Arrangement

<i>Arrangement</i>	<i>Section Numbers</i>
1&2 Introductory Material	1.1–1.3 Nature Purpose Scope Applicability Definitions
3. Primary Substance	1.11–1.13 Positive requirements in order of time or other logical sequence
4. Other Provisions	1.21–1.23 Exceptions Exemptions Prohibitions
5. Benefits or Sanctions	1.31–1.33 The Direct results of compliance or noncompliance

b. Table of contents. The table of contents will list section headings, subpart headings, and appendix headings contained in the document. This table enables the reader to quickly grasp the scope of a particular part. The table of contents should precede the citation of authority (para D-8) and is single-spaced. Material within a document must be preceded by a table of contents whenever—

- (1) A new part, subpart, or section is added.
- (2) An existing part, subpart, or section is completely revised.
- (3) Two or more sections of a subpart grouped under a center-head title are added or revised (see figure D-1). Table of contents changes need not be shown when single or miscellaneous sections are being added or amended. This will be done automatically when the change is incorporated in the CFR.

PART 516—LITIGATION
Subpart A—General

Sec.

516.1 Purpose.

516.2 References.

516.3 Explanation of abbreviations and terms.

516.4 Responsibilities.

516.5 Restriction on contact with DOJ.

516.6 Appearance as counsel.

516.7 Mailing Addresses.

Subpart B—Service of Process

516.8 General.

516.9 Service of Criminal Process within the United States.

516.10 Service of Civil Process within the United States.

516.11 Service of Criminal Process outside the United States.

516.12 Service of Civil Process outside the United States.

516.13 Assistance in the serving process overseas.

516.14 Service of process on DA or Secretary of the Army.

Figure D-1. Example of Table of Contents

c. Section and paragraph headings.

(1) Give each part, subpart, section and appendix a short, descriptive heading and place the section number and the heading on a separate line above the beginning of the text. Headings are used to make it easier for the reader to find a particular provision. Together with center headings, they are carried in the table of contents to give the reader an overview of the rules.

(2) Headings are also used for paragraphs when they serve to promote understanding of the text. If one paragraph in a section is assigned a heading, all paragraphs in that section should have headings.

d. Numbering. Do not renumber CFR units to make room for additions, or to close gaps after a provision is removed.

(1) In the initial assignment of numbers, room should be left if additions are anticipated. If it is necessary to add material that was not anticipated, designate it as follows—

(2) To remove a typographical unit from within a rule or from within a series of rules, label the removed unit "Reserved." This serves to maintain the integrity of a rule and to avoid subsequent confusion. Renumber or reletter

only when removals and other changes are so complex that a complete revision is necessary. (See table D-1 for use of "[Reserved].")

D-5. Asterisks

a. Asterisks in a rule or proposal document represent presently codified material that will not be altered and help the reader judge the extent of an amendment.

b. Five asterisks in a row show that one or more paragraphs or a typographical unit are not being changed. Three asterisks in a row show that text within a paragraph is not being changed. The net effect of the asterisks is to create a CFR format in which the changed text alone is set forth. (See example in figure D-2.)

Use of 5 asterisks:

Shows that paragraphs (a) through (c) and the text following (d) remains unchanged.

Revise paragraph (d) of §166.15 to read as follows:

§ 166.15 State status.

(d) The following States issue licenses under cooperative agreements
Puerto Rico, Texas, and Washington.

Use of 3 asterisks:

Shows that paragraphs (a) and (b) (1) through (b) (4) and the text following (b) (5) (i) remains unchanged.

Revise § 202.3 (b) (5) (i) to read as follows:

§ 202.3 Registrations of copyright.

(b) ***

(5) ***

(i) The Library of Congress receives two complimentary copies ... of
the serial.

Figure D-2. Use of Asterisks

D-6. Simple narrative amendments

Amendments, such as the addition or deletion of a word or short phrase can be accomplished by stating the amendment in narrative style. For example: In § 500.2 paragraph (a) is amended by inserting the word "or" between "property" and "services".

D-7. References

References can be made to other CFR rules currently in effect under conditions stated below; these references must not

make modifications to the rule being referenced. If modifications are made the rule must be published separately in its entirety.

a. Make references clear when citing provisions of the CFR. Write the specific titles, chapters, parts, sections, and paragraphs concerned. Do not make reference to "herein," "above," "below," and so forth (see table D-3).

b. References to material not published in the CFR or the FR must give the full title of the material and a statement of its availability.

c. Cross references to rules from other government agencies only if it meets any of the following conditions given in paragraphs (1) through (5) below, per 1 CFR 21.21—

- (1) Required by statute, court order, E.O., or reorganization plan.
- (2) Exclusive legal authority to regulate subject matter is authorized to another Federal Agency, but the Army needs to apply rule to its own programs.
- (3) It improves clarity or is informational, not regulatory.
- (4) Test methods or consensus standards produced by another Federal agency have replaced or preempted private or voluntary test methods or consensus standards in subject matter area.
- (5) Reference is to a departmental level rule.

Table D-3
Examples of CFR References

References to a different CFR title

In:	In reference to:	Write:
Title 44	Title 1, Chapter I	1 CFR Chapter I.
Title 44	Title 1, Chapter I Part 17	1 CFR Part 17.
Title 44	Title 40, Chapter I, Part 2, Section 2.8	44 CFR 2.7(a)(2).
Title 44	Title 44, Chapter I, Part 2, Section 2.7, paragraph (a)(2)	44 CFR Chapter 2.7(a)(2).
Title 44	The familiar name of another regulation in a different title.	In the Civil Service rules (5 CFR Chapter I).

References within the same title

In:	In reference to:	Write:
Chapter I	Chapter II	Chapter II of this title
Part 100 (Chapter I)	Part 300 (Chapter III)	Part 300 of this title
§ 250.10 (Chapter II)	§300.19 (Chapter III)	§ 300.19 of this title.

References within the same chapter

In:	In reference to:	Write:
Part 20	Part 30	Part 30 of this chapter.
§ 20.10	§ 30.19	§ 30.19 of this chapter.
§ 20.10	Subpart A of part 30	Part 30, subpart A of this chapter

References within the same part

In:	In reference to:	Write:
§ 20.5	§ 20.15	§ 20.15.
§ 20.5	§ 20.25, paragraph (a)	§ 20.25(a).
§ 20.5	Appendix A	Appendix A of this part

References within the same section

In:	In reference to:	Write:
Paragraph (a)	Paragraph (b)	Paragraph (b) of this section.
Paragraph (a)	Paragraph (b)(1)	Paragraph (b)(1) of this section.

D-8. Citations of authority

a. General. Each codified document must be covered by a complete citation of the authority for its issuance, including any statutory general rulemaking authority. When appropriate, it must also include any specific rulemaking authority delegated by statute and any executive orders that link the statutory authority to the Army. The rulemaking proponent is responsible for supplying accurate citations and for keeping them current. Changes to authority citations must be reflected by formal amendment in the same form as an amendment to regulatory text.

b. Authority citations. Authority citations should provide positive identification and ready reference in as few words as possible.

(1) *Statutory provisions.* These provisions should include—

(a) The section of the public law, if appropriate, the public law number, and the U.S. Statutes at Large. Do not cite the popular name of the public law. For example: Authority: Sec. 5, Pub. L. 89-670, 80 Stat. 931.

(b) U.S.C.

1. If the authority is a citation to a title of the U.S.C. that has been enacted into positive law, the references to the public law and Statutes at Large are unnecessary and should be omitted. The citation of only the U.S.C. is preferred. Cite the authority: Authority: 10 U.S.C. 501.

2. When the citations include two or more references (laws), separate the different references with a semicolon. Always place the U.S.C. citation first: Authority: 5 U.S.C. 30; 10 U.S.C. 3013; 49 U.S.C. 1354; Pub. L. 89-670, 80 Stat. 931; Pub. L. 85-726, 72 Stat. 752.

(2) *Nonstatutory provisions.* These may be Presidential Executive orders, agency executive delegations, or other documents, which show authority to issue regulations. Citations of this type of authority should identify the class of documents, including the specific control number, and the FR volume and page where the document was published. When possible, a parallel citation to the CFR should be included. For example: Authority: Special Civil Air Regulation SR-422A, 28 FR 6703. 14 CFR Part 46, E.O. 11130, 28 FR 12789. 3 CFR 1959-63 Comp.

(3) *Combined statutory and nonstatutory citations.* The statutory citations will precede nonstatutory material when both are cited. For example: Authority: Sec. 5, Pub. L. 89-670, 80 Stat. 931 (49 U.S.C. 1654); sec. 313, Pub. L. 85-726, 72 Stat. 752 (49 U.S.C. 1354); E.O. 11130, 28 FR 127898.

c. Placement of citations. The placement of an authority citation in a document varies with the nature of the document. The following examples show the different possibilities:

(1) *CFR part with a single authority.* Where the document affects the CFR part, place the authority immediately after the table of contents and before the text.

(2) *CFR subpart with same authority.* Where the document affects the CFR subpart with the same authority for the part, place citation as the first numbered item in the list of amendments.

(3) *CFR subpart with different authorities.* Where the document affects the CFR subpart with different authorities, place citation after the heading to the subpart and before the text.

(4) *CFR sections.* Where the document affects one or more CFR sections within a part, place the authority as the first numbered item in the list of amendments for the part.

(5) *Parts removed.* When removing a part from the CFR, an authority citation must be placed in the "words of issuance."

D-9. Effective date statements

a. General. The effective date is the date that the rule or amendments affect the CFR. A clear statement of each document's effective dates is essential for understanding and compliance.

(1) The proponent will provide an effective date for each amendment, revision, removal, and so forth, if different. Be sure the effective dates are legally permissible. It is sometimes necessary to give a section number to the effective date provision in a codified document. Do this only when the provision belongs in the CFR with other provisions of the part because it sets forth contingencies, distinctions, or other conditions under which effectiveness is determined. For example: DATES: This rule is effective November 11, 20XX, except for §19.2, which is effective December 20, 20XX.

(2) Rule documents may include other dates within the document, which are essential to the rulemaking proceedings. The following should be included, when applicable: a) Comment deadlines. b) Public hearings dates. c) Compliance dates. d) Applicability dates relevant to public knowledge of the proceedings. Place the comment and compliance dates after the effective date. The following is an example to use—

b. Form and placement. The appropriate place for the effective date statement is in the date block of the preamble as shown in figure B-2.

c. Determining effective date. Proponents of Army regulations must comply with DA Pam 25-40, paragraph 10-7d in determining the effective date of a publication.

(1) If possible, do not tie effectiveness to publication in the FR by making it effective on the "publication date" or ". days after publication in the FR." Publication dates for the FR can be computed by using the following regular schedule:

Table D-4
Schedule for publication dates

Received in OFR	Filed for Public Inspection	Published in FR
Monday	Wednesday	Thursday
Tuesday	Thursday	Friday
Wednesday	Friday	Monday
Thursday	Monday	Tuesday
Friday	Tuesday	Wednesday

(2) Add 2 days for processing by RMDA. In addition, when a legal holiday intervenes, 1 additional workday is added.

(3) Dates will be computed by counting the day after the publication day as the first day and by counting each succeeding day, including Saturdays, Sundays, and holidays. However, where the final count would fall on a Saturday, Sunday, or holiday the date will be the next succeeding business day.

(4) After consideration of the above if the proponent wishes to tie effectiveness to publication date and is not sure of that date the OFR will supply the actual date in the published document. In such cases the effective date should be stated as follows: "The amendment takes effect on [. . . DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]."

D-10. Preferred expressions

Unless there are special reasons to the contrary, use the expressions in the "Preferred Usage or Comment" column (see table D-5).

Table D-5
Usages

Term	Preferred Usage or Comment
"...is directed" "it's the duty of ... to" "is authorized and directed" "it is the responsibility of ...to"	"shall" (use shall when indicating an obligation)
"is authorized to" "is entitled to" "it shall be lawful to" "is entitled to"	(2) "may" (use may to indicate when a discretionary right, privilege, or power is given)
(3) "in case" "in the event that" "provided, provided that"	(3) "if"
(4) "in a case in which" "in the case of" "in situation which" "on the occasion" "during periods when" "whenever"	(4) "when," "where" (use "whenever" or "wherever" only when emphasizing the exhausting or recurring applicability to the proposition)
(5) "for the reason that" "based on the fact that" "due to the fact that" "as a result of" "on account of" "owing to the fact that" "reason is because"	(5) "because" , "because of", "due to", or "since"
(6) "pursuant to" "as prescribed by" "by virtue of" "under the provisions of" "in accordance with procedures set forth in"	(6) "under"
(7) "the provisions of section"	(7) "section"

Table D-5
Usages—Continued

Term	Preferred Usage or Comment
(8) "as of" "by means of" "by virtue of" "not later than"	(8) "by"
(9) "in order to" "as a means of" "in an effort to" "so as to" "with the purpose of"	(9) "to"
(10) "accorded"	(10) "given"
(11) "deem"	(11) "consider"
(12) "specified" (in the sense of "mentioned" or "listed")	(12) "named"
(13) "commence" "institute" "inception" "initial"	(13) "start" or "begin"
(14) "prior to" "previously" "previous"	(14) "before"
(15) "subsequent"	(15) "later"
(16) "subsequent to" "after the conclusion of"	(16) "after"
(17) "shall be considered to be"	(17) "is"
(18) "per annum" "per day" "per man" "per person"	(18) "a year" "a day" "a man" "a person"
(19) "all of"	(19) "all"
(20) "as a basis for" "in the amount of"	(20) "for"
(21) "provisions of law"	(21) "law"
(22) "attains the age of"	(22) "becomes years of age"
(23) "on his own application"	(23) "at his request"
(24) "calculate"	(24) "compute"
(25) "render"	(25) "make"
(26) "is (shall be) applicable"	(26) "applies"
(27) "on and after July 1, 1971"	(27) "after June 30, 1971"
(28) "from July 1, 1971"	(28) "after June 30, 1971"
(29) "purchase"	(29) "buy"
(30) "full and adequate"	(30) "full"
(31) "successfully completes" or "passes"	(31) "completes" or "passes"
(32) "in the course of"	(32) "during"
(33) "echelons"	(33) "levels"
(34) "chairman" "fireman" "husband (or wife)" "journeyman" "manpower" "mother (or father)"	(34) "chair" "firefighter" "spouse" "trainee" "human resources" "labor force" "parent"
(35) "party"	(35) Avoid, if you mean "person"

D-11. Preferred word usage

a. "Shall" and "may": If a discretionary right, privilege, or power is conferred, use "may." If a right, privilege, or power is abridged, use "may not." If an obligation to act is imposed, use "shall." Avoid the common practice of using a negative subject with an affirmative "shall." Don't say "A person shall not . . .," say "A person may not . . ."

b. "Any," "each," "every," and so forth (technically known as "pronominal indefinite adjectives") should be used only where necessary. When their use is necessary, follow these conventions:

(1) If a right, privilege, or power is conferred use "a" or "any" (for example, "any person may ...").

(2) If an obligation to act is imposed, use "each" (for example, "each applicant shall ...").

(3) If a right, privilege, or power is abridged, or an obligation to abstain from acting is imposed, use "No ... may" (for example, "No operator may ...") or "A ... may not."

c. "Such" : Although the word "such" is commonly used in legal writing as a "demonstrative" (a word pointing at something already referred to), this use is not considered to be the best practice, because it is a stilted "legalistic" way of saying something better expressed by "the," "that," "these," "it," "them," and so forth, and it is easily confused with the more appropriate uses of the word as a synonym, when followed by "a" or "as" for "that kind of."

d. Circumlocutions. Avoid pairs of words having the same effect or one of which includes the other such as: "terms and conditions," "sole and exclusive," "authorized and empowered," "authorized and directed," "necessary and desirable," and so forth.

Appendix E Preparation of General Notice Documents

E-1. General information

a. General notices are documents containing information applicable to the general public that are not codified in the Code of Federal Regulations. Notices do not contain regulatory text or impose requirements with general applicability and legal effect, nor do they affect rulemaking. Some notices are required by law to be published in the FR others are published to provide information to the public. Typical notice documents are:

(1) Open, partially open, and closed meetings. Meetings that require publication under 5 U.S.C § 552 (b) must be published at least 1 week prior to the date of the meeting; and meetings that require publication under 44 U.S.C §1508 must be published 15 days prior to date of meeting.

(2) Advisory committees. Establishment and renewal of advisory committee are published per Federal Advisory Committee Act, sec. 10 and 41 CFR § 102-3.160.

(3) Issuance or revocation of licenses.

(4) Availability and granting of patent applications.

(5) Availability of environmental impact statements.

(6) Orders or decisions.

(7) PRA, notices are published at least 60 days in advance of submission of the clearance package to OMB (44 U.S.C 3506(c)(2)); this report is submitted by the Army Reports Clearance Officer.

b. Due to the wide variety of notice documents definitive drafting guidance is not available. However notice documents have similar elements to rulemaking documents and the information in appendixes B and C will be helpful in drafting notices (see figure E-1).

(1) Use 8½ by 11-inch single-sided white paper.

(2) Number all pages consecutively.

(3) One-inch margins at the top, bottom, and right side, the left side margin is one and half inches.

(4) Double-space all primary text and single space:

(a) Quoted material.

(b) Footnotes and notes to tables.

(c) Tables.

(d) Examples.

(e) Formulas.

(f) Authority citations.

(g) Signature block.

(5) Quoted material is single spaced, centered-block style, with no quotation marks.

c. Procedures for publishing notices in the FR are similar to rulemaking documents—

(1) Three legible copies must be submitted with the original. The issuing official can sign all copies (duplicate original) or RMDA (AHRC-PDD-RP) can certify the copies as true copies of the original.

(2) Photocopies may be submitted as originals provided they are of high quality and each copy is signed in ink.

(3) Disk submission can be included with your paper copies (see appendix B, para B-10e for requirements).

Sample Format --Notice

BILLING CODE: 3710-(Insert appropriate code)

DEPARTMENT OF DEFENSE

Department of the Army (Standard)

Department of the Army; Corps of Engineers (U.S. Army Corps of Engineers usage)

(Title or Subject of the notice)

AGENCY: Department of the Army, DOD. (Agency's name)

ACTION: Notice of availability, intent, meeting, etc.

SUMMARY: Provide a brief summary of the what, why, and intended effect of the action (amending a previous notice, announcement of meeting, granting a patent, etc. Include authority citations in the shortest form giving the DA the authority to issue the notice; however do not use legal citations. For notices only you may cite public law, popular law name (acts of Congress) or the U.S. Statutes at Large, in addition to statutory and nonstatutory authorities. (Citation can appear in parentheses.) Use language a non-expert will understand. Be clear and concise. Do not include qualifications, exceptions, or specific details. Supporting information, details, discussions, etc. belongs in the SUPPLEMENTARY INFORMATION section.

DATES: Presents the "when" of the document, date format MMDDYYYY. It includes the dates within the document that are essential to the notice. List no more than 4 dates under this caption. If more than 4 dates are listed place under the SUPPLEMENTARY INFORMATION section under a heading call "Meetings." The following should be included, when applicable: 1) Effective date; 2) Confirmation of effective dates; 3) Comment deadlines; 4) Public hearings date (if any); and 5) Other dates relevant to public knowledge of the proceeding. The OFR computes and inserts dates tied to the FR publication, if you want the OFR to compute a date insert the following: [INSERT DATE XX DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Include any address that the public is may need to know.

Addresses appropriate for inclusion include addresses for: 1) Mailing public comments; 2) Hand delivering public comments; 3) Attending a public hearing (if applicable); 4) Examining any material available for public inspection.

FOR FURTHER INFORMATION CONTACT: Insert contact's name and telephone number.

SUPPLEMENTARY INFORMATION: In this section include background information and necessary details. Use descriptive headings to organize topics and text. If referencing the FR or CFR use abbreviations and formats provided in appendix B.

Dated: (optional)

(Signature of Official)

(Title)

Figure E-1. Example of Notice Document Format

E-2. Drafting general notices

All general notice documents include the following:

- a. Billing Code.
 - b. Preamble headings, in the same order as rulemaking documents (see para B-10 and D-1c.)
 - c. Authority citation. For example Army regulations, policy, and so forth. (See para D-1e(3).)
 - d. Body Text
 - e. Signature.
 - f. Printed name and title of signer.
 - g. Date signed, optional. (See figures E-1 and E-2 for examples of notice documents.)
-

Sample Format --Sunshine Act

BILLING CODE: 3710-(Insert appropriate code)

DEPARTMENT OF DEFENSE

Sunshine Act Meetings

AGENCY: Agency holding meeting.

TIME AND DATE: Time format 8:30 AM and Date format MMDDYYYY.

PLACE: Street address of meeting location.

STATUS: Open or closed to the public.

MATTERS TO BE CONSIDERED: Provide a brief summary of the what, why, and intended effect of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Insert contact's name and telephone number.

(If multiple meetings are being announced by the same agency, repeat the TIME AND DATE, PLACE, STATUS, AND MATTERS TO BE CONSIDERED headings.

Dated: (optional)

(Signature of Official)

(Title)

Figure E-2. Example of Sunshine Act Document format

E-3. Sunshine Act meetings

Sunshine Act notices are published in compliance with 5 U.S.C. 552b(e)(3). This notice has a different format than the other meeting notices (see figures E-2 and E-3).

Sample Format --Meeting

BILLING CODE: 3710-(Insert appropriate code)

DEPARTMENT OF DEFENSE

Title or Subject of Meeting

AGENCY: Department of the Army, DOD.

ACTION: Notice of open meeting, closed meeting, or partially-open meeting.

SUMMARY: State name of committee, include authority citations in the shortest form giving the DA the authority hold the meeting; however do not use legal citations. You may cite public law, popular law name (Acts of Congress) or the U.S. Statutes at Large, in addition to statutory and nonstatutory authorities. (Citation can appear in parentheses.)

Dates: Date format MMDDYYYY.

Time: Time format 8:30 AM.

Location: Street address of meeting location.

Proposed Agenda: Provide a brief summary of the what, why, and intended effect of the meeting.

FOR FURTHER INFORMATION CONTACT: Insert contact's name and telephone number.

SUPPLEMENTARY INFORMATION: In this section include background information and necessary details. Use descriptive headings to organize topics and text. If referencing the FR or CFR use abbreviations and formats provided in appendix B. If more than 4 dates are listed place under this section under a heading call "Meetings."

(Signature of Official)
(Title)

Figure E-3. Example of Meeting Document format

E-4. Effective date statements

Many notice documents do not involve a specific time of effectiveness. When they are necessary write them in the date section of the preamble.

Appendix F Unified Agenda and Regulatory Plan Questionnaire

Unified Agenda and Regulatory Plan Questionnaire

F-1. General

This figure is an example of the Unified Agenda and Regulatory Plan Questionnaire.

F-2. Questionnaire format

Figure F-1 is shown below.

The DA provides reports to Unified Agenda of Federal Regulatory and Deregulatory Actions, published in the Federal Register in the Spring and Fall, in compliance with EO 12866. To assist in the reporting of proposed, interim, or final rules that have public impact or interest the following information is to be submitted to the FRLO, with the rule submission.

Note: Consult your General Counsel for assistance before responding.

Part Number: 32 CFR Part. DA issuances are contained in Parts 400 through 699 of Title 32. Civil Works projects under the U.S. Army Corps of Engineers can be found in Parts 200 through 399 of Title 33 and Parts 300 to 399 of Title 36.

RIN: A702-XX. The RIN is a document number assigned to regulatory action published in the CFR and Unified Agenda of Federal Regulations. The DA FRLO will provide the RIN.

The DA Issuance Number: (Regulation number)

Title of the Rule: (Should be the same as regulation title.)

Authority Citation: (Legal authority for issuing the rule.)

Abstract: Succinct statement on why rulemaking action is necessary, one or two sentences.

Priority Status of the Rule

1. Will this rulemaking action be reported in the Regulatory Plan? Yes or No.

E.O. 12866 requires that significant regulatory actions for the forthcoming fiscal year be identified, if the rule is determined to be economically significant check YES.

2. Identify the priority of the rulemaking action by selecting one of the five categories:

a. **ECONOMICALLY SIGNIFICANT.** A rulemaking action having an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, environment, public health or safety, or State, local or tribal governments or communities. (These rules will appear in the Army's regulatory plan.)

b. **OTHER SIGNIFICANT.** A rulemaking action that is not economically significant but considered significant by the Army; this includes rules that the DA/DOD anticipates will be reviewed under E.O. 12866 or rules that are a priority to the DOD. (These rules may be included in the Army's regulatory plan.)

c. **SUBSTANTIVE, NONSIGNIFICANT.** A rulemaking action that has substantive impacts but is neither Significant, Routine, nor Informational/Administrative. This action is not economically significant and will not be reviewed under E.O 12866. (These rules are included in the Unified Agenda.)

d. **ROUTINE AND FREQUENT.** A rulemaking action that is a specific case of a multiple recurring application of a regulatory program in the CFR and

Figure F-1A. Unified Agenda Regulatory Plan Questionnaire

does not alter the body of the regulation. (Examples: Public Land Order, Navigation Areas, Fisheries, Restricted Area, etc.)

e. **INFORMATIONAL/ADMINISTRATIVE/OTHER.** A rulemaking action that changes the procedure or process for carrying out a rule but does not affect the substance of a rule. DA places this action in the Unified Agenda to inform the public of activity. (Examples: Advanced notice of proposed rulemaking, advisory committee, corrections, effective date, and so forth.)

Unfunded Mandates. Yes or No. Indicate whether rulemaking action is covered under section 202 of the Unfunded Mandates Reform Act (P.L. 104-4) because it includes a Federal Mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year. If the answer is YES, indicate category:

- a. State, local, or tribal governments
- b. Private sector

Major Rule. Yes or No. Indicate whether this rule is considered "major" and therefore subject to the 60-day deferral requirement under 5 U.S.C. 801, enacted by P.L. 104-121, because it has resulted or is likely to result in an annual effect on the economy of \$ 100 million or more, or meets other criteria specified in the Act. If your answer is YES for this item, then you should have selected, under Priority Status, either item 2a or 2b above.

Effects on Small entities and Levels of Government

1. Indicate whether or not the action is expected to have significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601(6)). Yes or No

2. If your answer is yes, to item 1, indicate who will be affected by the rulemaking action from the following:

- a. Businesses
- b. Government jurisdictions
- c. Organizations

3. Indicate whether or not the action is expected to affect levels of government. Yes or No

4. If your answer is yes, to item 3, indicate who will be affected by the rulemaking action from the following:

- a. Federal
- b. State
- c. Local
- d. Tribal

Procurement. Yes or No. Indicate whether this rulemaking action is procurement related.

Figure F-1B. Unified Agenda Regulatory Plan Questionnaire — Continued

Glossary

Section I Abbreviations

AASA

Administrative Assistant to the Secretary of the Army

APA

Administrative Procedure Act

APD

Army Publishing Directorate

ASA(CW)

Assistant Secretary for Civil Works

AR

Army Regulation

CFR

Code of Federal Regulations

CRA

Congressional Review Act

DA

Department of the Army

DCS, G-1

Deputy Chief of Staff, G-1

DOD

Department of Defense

DODD

Department of Defense Directive

EA

economic analysis

EO

executive order

FOIA

Freedom of Information Act

FR

Federal Register

FRLO

Federal Register Liaison Officer

GAO

Government Accountability Office

GPO

Government Printing Office

MACOM

major Army command

OFR

Office of the Federal Register

OMB

Office of Management and Budget

PL

public law

PRA

Paperwork Reduction Act

RIN

Regulation Identifier Number

RMDA

Records Management and Declassification Agency

TAG

The Adjutant General

USACE

United States Army Corps of Engineers

USC

United States Code

Section II**Terms****Adopted Rule**

A rule the Federal agency has agreed to implement, after consideration of relevant information presented. This document presents the decision of the issuing Agency (see Final Rule).

Amendatory Language

Words or phrases used to describe specific changes to be made to the CFR (see appendix D and para D-3).

Authority citation

The Legislative, Regulatory, Secretarial, or Executive authority to sanction or approve the issuance of a rule (see appendix D and para D-8).

Code of Federal Regulations

The annual codification of rules published by each Federal Agency. It is divided into 50 titles representing broad subject areas for each Federal Agency and these titles are further subdivided into Chapters, Subchapters, Parts, and Subparts. For example, Title 32, National Defense, Chapter V, contains DA rules.

Closed meeting

A meeting that is closed to the public.

Federal Register

A daily Federal workday publication, which contains four categories of documents: Rules, Proposed Rules, Notices, and Presidential documents. These documents are created by Federal Agencies and the Office of the President and are made available to the public due to public interest and to encourage public participation in the rulemaking process.

Final Rule

A document published in the FR and CFR stating the adoption of a proposed rule or interim final rule by a Federal agency. This document presents the decision of the issuing Agency and addresses public comments.

Interim Final Rule

A document that is effective immediately without a prior publication as a proposed rule, usually to respond to an emergency situation or as a result of a legislative or executive requirement. This document may request comments. An

interim final rule must be published as a final rule to become permanent and incorporated into the FR. If any changes were made to the interim rule as a result of comments received, a discussion of comments should be included.

Joint Rule

Documents implementing jointly administered programs or activities. An authorizing official from each Federal Agency signs the document, when two or more agencies are identified in the preamble of the rule.

Major Rule

Any regulatory action (proposed, interim final, or final rule) that is likely to: (a) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, environment, public health or safety, or State, local, or tribal governments or communities; (b) Create a serious inconsistency or interferes with an action taken or planned by another Agency; (c) Materially alter the budgetary impact entitlements, grants, user fees, or loan programs or the rights and obligations of the recipients thereof; (d) or Raise a novel legal or policy issues arising out of legal mandates, the presidents priorities or principles set forth in EO 12866. NOTE: Also referred to as a Significant Rule.

Notice

A document containing information of general public interest that is not codified in the CFR, such as a meeting or patent availability. The document does not contain regulatory text, impose requirements with general applicability or legal effect, or affect rulemaking proceedings. Some notices are required by law to be published in the FR. See definitions for open and closed meetings.

Open Meeting

A meeting that is open to the public.

Preamble

The introductory information of all documents published in the FR that answers "who, what, where, when, and why" of the document for the reader's convenience. The preamble contains captions that must appear in a specific order to ensure consistency in the FR (see figures B-2 and E-1).

Proposed Rule

A draft document of a rulemaking action that is published in the FR requesting public comment.

Regulation Identifier Number (RIN)

A document number assigned by OMB to a regulatory action published in the Unified Agenda of Federal Regulations and the CFR.

Regulatory Plan

A statement that identifies significant regulatory actions that a Federal Agency expects to issue in proposed or final form during that fiscal or forthcoming fiscal year per EO 12866.

Rule

A regulatory document that intends to implement, interpret, prescribe law or policy, or describe procedures or requirements, having general applicability to, and future legal effect on, the public that is published in the FR and codified in the CFR. See definitions for Interim Final Rule, Proposed Rule, Final Rule, and Major Rule.

Unified Agenda of Federal Regulations

A consolidated OMB document published in the FR consisting of published rules that have significant public impact and public interest per EO 12866.

Section III

Special Abbreviations and Terms

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